decency of the community. It is not permissible or excusable under any circumstances." In *James* v. *State,* 4 Okla. Crim. Rep. 587, it is said that a house or place kept for the purpose of enabling persons to place bets or wagers upon horse races is a common gambling house, and is, therefore, a nuisance *per se.* See also *Jones* v. *State* (Okla.), 132 Pac. 319. In the *Ehrlick* case, *supra,* the court also held that where the thing is *per se* a nuisance, such as a pool room or gambling house, it is no defense that there was no noise or disturbance, nor that the community was not disturbed by its presence. This is supported by authority, *King* v. *People,* 83 N. Y. 587, where it was held that it was not an essential element of the offense of keeping a disorderly or gaming house that the public should be disturbed by the noise.

NUISANCE—ATTRACTIVE NUISANCE—NEITHER COFFER DAM NOR POND IS.—The Supreme Court of Iowa recently handed down two decisions on attractive nuisances. In the one case, a railroad maintained a coffer dam in support of one of the piers of its bridge. A beam extended entirely around the dam, and the plaintiff's intestate (eight years old) was drowned by the water within the dam by losing his balance in an attempt to walk the beam. In the other, the plaintiff's intestate (five years old) was drowned in a pond that was allowed by the railroad to remain undrained on its right of way. In both cases the plaintiff's right to recover was denied. *Massingham* v. *Illinois Central Ry. Co.* (Iowa, 1920), 170 N. W. 832; *Blough* v. *Chicago Great Western R. Co.* (Iowa, 1920), 179 N. W. 840.

The trend of the decisions points to a refusal by the courts to extend the rule of attractive nuisance advanced in the turntable cases. 2 COOLEY, TORTS [Ed. 3], 1272, n. 43. For cases representative of this tendency, see *Ryan* v. *Towan,* 128 Mich. 463 (water wheel); *Sullivan* v. *Boston & Albany R. Co.,* 156 Mass. 378 (charged wire on the roof of a shed); *Rogers* v. *Lees,* 140 Pa. St. 475 (hoisting apparatus); *Loftus* v. *Dehail,* 133 Cal. 214 (open cellar); *O'Connor* v. *Brucker,* 117 Ga. 475 (open door of a vacant house); *Arnold* v. *St. Louis,* 152 Mo. 173 (pond covered with ice). But see *Comer* v. *City of Winston-Salem* (N. C., 1919), 100 S. E. 619, 18 MICH. L. REV. 340, where the city was held liable for failure to maintain a proper railing on its bridge. See also *Ramsay* v. *Tuthill Building Material Co.* (Ill., 1920), 129 N. E. 127, which arose over the death of a child smothered by sand in a bin in which deceased was playing.

NUISANCE—FUNERAL HOME IN A RESIDENTIAL SECTION.—The defendants bought a house in an exclusive residential section and commenced to use it for the purpose of a funeral home in connection with their undertaking establishment, which was situated in another part of the city. They constructed a driveway entirely around the house for the purpose of parking funeral cars and carriages. The nature of the business required that bodies should be allowed to remain there from twenty-four to thirty-six hours. Services were held and funeral processions started from the home. The effect of the establishment was to impair materially the value of the sur-

rounding property. In a suit by residents of the neighborhood, *held,* that although a funeral home is not a nuisance *per se,* under the circumstances of this case it must be held to be such; and an injunction will issue to restrain the use of the premises for that purpose. *Meagher* v. *Kessler* (Minn., 1920), 179 N. W. 733.

The court places the funeral home in the same category as undertaking establishments, which uniformly have been held not to be nuisances *per se.* They become nuisances, however, when they are conducted in a residential district, and where their effect is to impair the enjoyment of the neighboring premises and to decrease the value of the property in the neighborhood generally. There are but few cases on the subject, most of which are collected in a note to *Goodrich* v. *Starrett,* 108 Wash. 437, 184 Pac. 220, in 18 MICH. L. REV. 246. See also 19 MICH. L. REV. 111, commenting on *Beisel* v. *Crosby* (Neb., 1920), 178 N. W. 272.

RES IPSA LOQUITUR—RELATION TO BURDEN OF PROOF.—In an action for negligent burning of timber on the plaintiff's land there was some evidence that the fire originated from sparks emitted from one of the defendant's engines. The court recognized that the case was a proper one for the application of the doctrine of *res ispa loquitur,* and in its instruction to the jury imposed upon the defendant the burden of satisfying the jury by a preponderance of the evidence that it was not negligent. *Held,* instruction erroneous. The doctrine of *res ipsa loquitur* does not change the burden of proof, but merely makes a prima facie case in favor of the plaintiff and places on the defendant the burden of going forward with the evidence. *Page* v. *Camp Mfg. Co.* (N. C., 1920), 104 S. E. 667.

The court in the instant case correctly states what is now the prevailing view as to the relation between the doctrine of *res ipsa loquitur* and the burden of proof. The principle is applied where the circumstances of the occurrence are such as to warrant the inference of negligence and makes it incumbent upon the defendant to adduce evidence in rebuttal if he desires to do so. *Sweeney* v. *Erving,* 228 U. S. 233; *Kay* v. *Metropolitan St. Ry. Co.,* 163 N. Y. 447; *Everett* v. *Foley,* 132 Ill. App. 438. South Carolina supports the view that the burden of proof is thereby shifted. *Sullivan* v. *Charleston & W. C. R. Co.,* 85 S. C. 532. Instructions similar to those given in the instant case were upheld in *Atlantic Coast Line R. Co.* v. *Jones,* 132 Ga. 189. For many other cases approving similar instructions see note in L. R. A. 1916A 930. Even in many cases which recognize the theoretical soundness of the rule that the burden of proof never shifts confusion has been introduced into the law in deciding whether or not given instructions are in conformity to the rule. This has been due to a misapprehension of the correct meaning of the terms "burden of proof" and "preponderance of the evidence" or to a loose employment of these terms. *Furnish* v. *Mo. P. R. Co.,* 102 Mo. 438; *Baum* v. *N. Y. Q. C. R. Co.,* 124 App. Div. 12; *Abrams* v. *Seattle,* 60 Wash. 356; *Carroll* v. *Boston Elev. R. Co.,* 200 Mass. 527. Some of these courts have suggested that a loose or unscientific use of these terms will not